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prospective purchasers as inducements to bid would control, even though controverted by the auctioneer.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 708, et seq.]

**3. Specific Performance (§ 121 (9)\*)—Evidence Held to Show Cannery Lot Included.**—In a suit for specific performance of a contract for the sale of land, evidence *held* to sustain the purchaser's contention that a cannery lot was included.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 624, et seq.]

**4. Appeal and Error (§ 1152\*)—Decree Modified, by Accepting and Reserving Lessee's Rights in a Part of Property.**—A decree for specific performance, stating the effect of a deed to be to divest vendor of legal title and all interest, and to invest the purchaser therewith, will be amended by a recital excepting and reserving the rights of a lessee in an included cannery lot under an unexpired lease, notwithstanding lessee's rights could not be affected by this litigation.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 696, et seq.]

Appeal from Circuit Court, Bedford County.

Suit by W. O. Mitchell against S. R. Watson. Judgment for plaintiff, and defendant appeals. Amended and affirmed.

*S. S. Lambeth, Jr.*, of Bedford City, for appellant.

*Willis, Adams & Hunter*, of Roanoke, for appellee.

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ROSE *v.* AGEE et al.

Nov. 18, 1920.

[104 S. E. 827.]

**1. Boundaries (§ 3 (9)\*)—Designation of Acreage Must Yield to Definite Boundaries.**—A designation of acreage in a deed must yield to definite boundaries in determining what land was conveyed.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 398, 427 et seq.]

**2. Ejectment (§ 13\*)—Equitable Title Will Not Support.**—Plaintiff who received only an equitable title from her predecessor cannot maintain action of ejectment.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 883.]

**3. Estoppel (§ 27 (2)\*)—Plaintiff Estopped by Covenants in Predecessor's Deed to Defendants to Deny their Title.**—Where, if plaintiff's predecessor secured legal title, so that plaintiff can maintain action of ejectment, he got it from another person with a court com-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

missioner as a mere conduit, plaintiff, thus holding under such other person, is estopped by the covenants in such other person's deed to defendant to deny the title as against defendants.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 206, et seq.]

**4. Estoppel (§ 38\*)—Title by Estoppel under Covenants of Warranty Vests in Grantee on Grantor's Acquiring Title.**—Where, prior to his conveyance to H., the subsequent owner of land had conveyed to A., with full covenants of title, a boundary embracing some 97 acres of the whole tract, the moment he subsequently acquired title it inured to the benefit of A. and his successors, defendants in action of ejectment brought by the successor of H.; it being immaterial whether the grantor acquired the legal or only the equitable title.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 215, et seq.]

**5. Estoppel (§ 45\*)—Vendor and Vendees Cannot Set up against Prior Vendee and Successors Beneficial Title or Claim Subsequently Acquired and Breaching Covenants.**—Neither the vendor of land or his vendees could successfully set up as against a prior purchaser and his vendees any beneficial title or claim acquired by the original vendor subsequent to the deed to the prior purchaser which would result in a breach of the covenants in such deed.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 215, et seq.]

**6. Adverse Possession (§ 35\*)—Possession of Corporation's Agent Not Possession of Corporation After Receivership of Corporation and Its Ceasing Relationship to the Land.**—Where the agent of a coal and iron company in possession of certain land for it took conveyance of the land, and thereafter the company was placed in the hands of a receiver and ceased to have any sort of relationship to the property, and from 1891 until the time of bringing suit against him, more than 25 years, such agent and his grantees, his codefendants in ejectment, maintained possession of part of the land with claim to the whole, they thereby acquired complete title by adverse possession.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 208, et seq.]

**7. Costs (§ 47\*)—Properly Awarded against Plaintiff Who Failed to Recover Land in Controversy.**—Where the land awarded plaintiff in ejectment was disclaimed by defendants and never at any time had been in dispute, the judgment properly awarded costs against plaintiff who failed to recover the land really in controversy.

Error to Circuit Court, Botetourt County.

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Numbered Digests and Indexes.

\*For other cases see same topic and KEY-NUMBER in all Key-

Action by Matilda Rose against S. C. Agee and others. To review judgment for defendants, except as to the portion of the land disclaimed by them, plaintiff brings error. Affirmed.

*Haden & Haden*, of Fincastle, for plaintiff in error.

*C. M. Lunsford*, of Fincastle, and *Wm. R. Allen*, of Buchanan, for defendants in error.

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ROBERTSON *v.* BERTHA MINERAL CO. et al.

Sept. 16, 1920.

[104 S. E. 832.]

**1. Easements (§ 61 (2)\*)—Unlawful Use May Be Enjoined.**—The unlawful use of an easement may be enjoined.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 867.]

**2. Injunction (§ 21\*)—Remedy Not Waived by Agreement of Parties.**—Where complainant, the owner of the servient tenement objected to the repair of a railway over his premises and it was agreed that application for injunction should not then be made but that the work should be allowed to proceed and in event amicable settlement could not be reached complainant should be entitled to his remedies at law such agreement will not prevent the later issuance of an injunction.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 867.]

**3. Railroads (§ 82 (2)\*)—Landowner Not Estopped from Denying Right of Way Easement.**—Where a railway originally constructed as a mining road over complainant's property had not been used for a number of years at the time complainant bought the servient tenement and the road had fallen into bad repair so that the physical condition indicated an actual abandonment, complainant was not estopped from denying the right of the owner of the easement to resume operations.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 863, et seq.]

**4. Railroads (§ 73 (1)\*)—Right to Use Way for Purpose Not Contemplated by Grant Dependent on Prescription.**—To entitle the owner of an easement for a railroad right of way to use the same for a purpose not contemplated by the original grant, it is necessary that a prescriptive right for the new use be acquired.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 866, et seq.]

**5. Railroads (§ 72 (7)\*)—Void Reverter Clause in Deed May Be Considered in Determining Purpose of Conveyance.**—Where a grant of a railroad right of way provides that it shall revert whenever the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.